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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,259	03/23/2006	Martin Cottard	4005-0276PUS1	3015
2292 7590 11/01/2007 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER AKANBI, ISIAKA O	
			ART UNIT 2886	PAPER NUMBER
			NOTIFICATION DATE 11/01/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

## Office Action Summary

Application No.

10/573,259

Applicant(s)

COTTARD ET AL.

Examiner

Isiaka O. Akanbi

Art Unit

2886

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>23 March 2006</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**  
***Preliminary Amendment***

The preliminary amendment filed on 23 March 2006 has been entered into this application.

***Information Disclosure Statement***

The information disclosure statement filed on 23 March 2006 has been entered and considered by the examiner.

***Drawings***

The drawings filed on 23 March 2006, has been accepted for examination.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Kamiyama et al. (4,712,895).

Regarding claim 1, Kamiyama discloses a user positioning device comprising a stand (i.e. housing)(col. 4, lines 13-31) carrying two positioning markers (see abstract)(figs. 1, 2 and 6: 14 and 16)(col. 3, lines 63-65) that are disposed so that each can be seen by a respective one of the eyes (figs. 1,2 and 6: L and R) of a user, when the user is positioned

correctly, and means (figs. 1, 2 and 6: 22, 24, 48, 26) for forming a light path (figs. 1, 2 and 6:  $O_L$  and  $O_R$ ) between each of the eyes of the user and the corresponding positioning marker, the light paths being optically separate from each other relative to the eyes of the user (figs. 1, 2 and 6).

As to claim 2, Kamiyama also discloses a means for forming the light paths comprise a prism (figs. 1, 2 and 6: 26) that is reflective, at least in part, the positioning markers (see abstract)( figs. 1, 2 and 6: 14 and 16) and the prism being mounted on the stand (i.e. fixed inside the housing) in such a manner that the prism has surfaces (figs. 1, 2 and 6:  $OK_L$  and  $OK_R$ ) that substantially face respective positioning markers ( figs. 1, 2 and 6: 14 and 16) in order to reflect each positioning marker towards the corresponding eye of the user (col. 2, lines 36-col. 3, line 22).

As to claim 3, Kamiyama also discloses a means for defining the light paths comprising filter means (42)(col. 4, lines 13-19).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 4 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Kamiyama et al. (4,712,895)

As to claim 4, Kamiyama fails to disclose the type of filter means used in the system as being a filter means comprising two polarizers of a first type that are disposed one in front of the other in register with one of the positioning markers, and two polarizers of a second type that are disposed one in front of the other in register with the other one of the positioning markers, however, since he does not limit the filter means to be used, it would have been at least obvious to one of ordinary skill in the art to use any suitable filter means as desired to achieve the predictable results of obliquely illuminating the eyes L, R by illuminating means accurately. Further Kamiyama discloses the claimed invention except for the filter means type. It would have been at least obvious to one having ordinary skill in the art at the time of invention was made to provide a filter means comprising (i.e. two polarizers of a first type that are disposed one in front of the other in register with one of the positioning markers, and two polarizers of a second type that are disposed one in front of the other in register with the other one of the positioning marker), since it has been held that to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

### **Additional Prior Art**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed in the attached form PTO-892 teach of other prior art user positioning device that may anticipate or obviate the claims of the applicant's invention.

### **Conclusion**

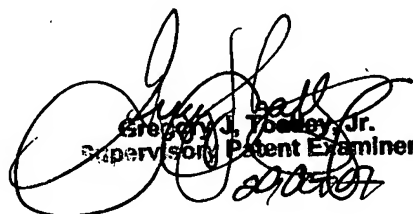
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isiaka Akanbi whose telephone number is (571) 272-8658. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifur R. Chowdhury can be reached on (571) 272-2287. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Isiaka Akanbi

October 27, 2007

  
Gregory J. Tobler, Jr.  
Supervisory Patent Examiner